IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1012 of 2007

Ravikumar .. Petitioner

Vs.

1. The Commissioner of Police
Egmore
Chennai-8.

2. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai-9. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.V.Parthiban
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The first respondent herein clamped an order of detention as against the detenu - Kishore Kumar @ Kishore, brother of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the brother of the

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detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records leading to the detention of the detenu, now detained in Central Prison, Puzhal, Chennai under Tamil Nadu Act 14 of 1982 vide detention order dated 29.6.2007 on the file of the first respondent herein made in D.O.No.271 of 2007, to quash the same and to direct the respondents herein to produce the detenu before this Court and to set him at liberty.

3.1. The order of detention dated 29.6.2007 was passed on the basis of ground case in Crime No.1598 of 2007 for alleged commission of offences under Sections 341, 332, 307 and 506(2) IPC. The allegation against the detenu was that on 19.6.2007 when Ramamoorthy and Siluvairaj, Head Constables attached to R6, Kumaran Nagar Police Station proceeded on duty to secure the absconding detenu involved in Crime No.1543 of 2007, they received information that the detenu was proceeding towards Guindy from Vadapalani in a Maruthi Car bearing registration No.TN 01 K 0306. When the police personnel stopped the car and asked the detenu to get down from the car, the detenu got down, took out a knife from the car and by brandishing the same threatened to kill the police personnel. When the police personnel went near to apprehend the detenu, the detenu rushed to fist Ramamoorthy over the throat, however, Ramamoorthy escaped from the said attack. The public who were at the spot noticed the atrocious activities and ran for safer places out of fear of danger. The detenu, noticing the surrounding of Ramamoorthy, cut him over his right hand and caused bleeding injury. However, the police personnel with the help of the public surrounded and apprehended the detenu at the spot and retrieved the knife.

3.2. Apart from the above, the detaining authority also took note of the two adverse cases pending against the detenu, viz.,

i. Crime No.1090 of 2007 registered on the file of Virugambakkam Police Station for the offence punishable under Sections 341, 323, 420, 387, and 506 (2) of IPC with reference to the occurrence said to have taken place on 25.4.2007; and

ii. Crime No.1543 of 2007 registered on the file of Kumaran Nagar Police Station for the offence punishable under Sections 342, 364(A) and 506 (2) of IPC with reference to the occurrence said to have taken place on 11.6.2007.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

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4. Heard both sides. We have perused the materials produced before us.

5. The main ground of attack in this case is that even though the complaint was lodged on 15.6.2007, the F.I.R. is dated 14.6.2007, i.e., even prior to the date of lodging of complaint, which is unsustainable.

6. Concededly, the complaint was lodged on 15.6.2007, but the F.I.R. is dated 14.6.2007, i.e., prior to the date of lodging of the complaint. The said aspect of the case raises a serious doubt as to the authenticity of the complaint and the F.I.R. The detaining authority has not considered the said discrepancy, which, in our considered opinion, is fatal.

For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 29.6.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1.The Secretary to Government
Home, Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

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2.The Commissioner of Police
Egmore, Chennai-8.

3.The Superintendent,
Central Prison,Chennai.

4.The Joint Secretary to the Government
of Tamil Nadu, Public (Law and Order)
Dept., Fort St. George, Chennai-600 009.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Parthiban, Advocate Sr 66404

JRG (CO)
km/20.11.

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